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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 JAMES LEE BURNS, *et al.*,

10 Plaintiffs,

11 v.

12 SCOTTSDALE INSURANCE COMPANY,

13 Defendant.  
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Case No. C08-1136RSL

ORDER DENYING MOTION  
FOR VOLUNTARY DISMISSAL  
OR TO AMEND

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16 This matter comes before the Court on a motion for voluntary dismissal filed by three of  
17 the plaintiffs, James Lee Burns, Mandy N. Burns, and Painless Steel–Everett, LLC (collectively,  
18 the “insureds”). The insureds seek to dismiss their claims without prejudice.

19 After plaintiff Lacey Filosa suffered an injury allegedly caused by the insureds, defendant  
20 denied covered to the insureds. Filosa entered into a settlement agreement with the insureds,  
21 and they assigned some of their rights, privileges, claims and causes of action against defendant  
22 to her. Filosa asserts a claim against defendant for an alleged violation of the Insurance Fair  
23 Conduct Act, RCW 48.30.015 and of the Consumer Protection Act, RCW 19.86 *et seq.*

24 The insureds seek relief pursuant to Federal Rule of Civil Procedure 41(a)(2), which  
25 provides that after defendant has answered the complaint, “an action may be dismissed at the  
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1 plaintiff's request only by court order, on terms that the court considers proper.”<sup>1</sup> “When ruling  
2 on a motion to dismiss without prejudice, the district court must determine whether the  
3 defendant will suffer some plain legal prejudice as a result of the dismissal.” Westlands Water  
4 Dist. v. United States, 100 F.3d 94, 96 (9th Cir. 1996) (internal citations omitted). The Court  
5 must also consider whether the insureds are necessary parties under Federal Rule of Civil  
6 Procedure 19, which governs compulsory joinder:

7 **(a) Persons Required to Be Joined if Feasible.**

8 **(1) Required Party.** A person who is subject to service of process and whose  
joinder will not deprive the court of subject-matter jurisdiction must be joined as a party  
if:

9 (A) in that person's absence, the court cannot accord complete relief among  
existing parties; or

10 (B) that person claims an interest relating to the subject of the action and is  
so situated that disposing of the action in the person's absence may:

11 (i) as a practical matter impair or impede the person's ability to  
protect the interest; or

12 (ii) leave an existing party subject to a substantial risk of incurring  
double, multiple, or otherwise inconsistent obligations because of the interest.

13 The insureds are required parties under both 19(a)(1)(A) and 19(a)(1)(B). This is an  
14 action for a declaratory judgment involving the interpretation of the insureds' insurance contract.  
15 Declaratory relief would be incomplete without both the insurer and the insured. See, e.g.,  
16 Aetna Cas. & Sur. Co. v. Rasa Mgmt. Co. Inc., 621 F. Supp. 892, 893 (D. Nev. 1985)  
17 (explaining, “In an action by a liability insurer for a declaratory judgment to determine the  
18 insurer's liability to an insured party, the insured is, of course, a necessary and indispensable  
19 party”). The fact that the insurer did not institute this action does not change the analysis.  
20 Rather, both the insureds and Filosa are seeking the same relief – a declaratory judgment to  
21 determine the insurer's liability to the insureds.

22 The insureds have an interest in this matter. Although the insureds assigned some of their  
23 potential claims against defendant to Filosa, they did not assign them all. The insureds explicitly  
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25 <sup>1</sup> Although plaintiffs also styled their motion as a motion to amend, it is more  
26 appropriately considered as a motion for voluntary dismissal because some of the plaintiffs are  
27 seeking to be dismissed.

1 reserved claims for damages for their attorney's fees, "personal damages to credit or reputation  
2 and other personal non-economic damages which arise from the assigned causes of action."  
3 Declaration of Emily Harris Gant (Dkt. #39), Ex. 3. If the Court were to find that the policy did  
4 not cover the injury to Filosa, that finding would "impair or impede" the Burnses' ability to  
5 protect their interest.

6 The insureds argue that there is no risk of inconsistent results because they have potential  
7 claims against defendant for failure to defend, and Filosa has a claim for failure to indemnify.  
8 However, Filosa could also assert a claim for failure to defend. She has explicitly refused to  
9 disavow that claim.<sup>2</sup> Therefore, defendant could be forced to litigate that issue twice.  
10 Moreover, the issues are inextricably intertwined.

11 The insureds would like to avoid the expense of litigating this case themselves, then if  
12 Filosa is successful, use *res judicata* against defendant. However, their desire to avoid the  
13 expense of litigation does not negate the purpose of Rule 19. Moreover, if defendant were to  
14 prevail in this case, the insureds could still argue that they are not bound by any judgment  
15 because they were not parties. Defendant would then be forced to incur the expense, burden,  
16 and uncertainty of re-litigating the case or trying to prove that collateral estoppel or *res judicata*  
17 applies. That is the prejudice that Rule 19 and Rule 41(a)(2) are designed to avoid.

18 Finally, defendant requests that the Court dismiss the insureds' claims with prejudice.  
19 However, this is not a case where required parties cannot be joined. Although defendant is  
20 concerned that the insureds will not comply with their discovery obligations, they, as parties,  
21 will be required to do so. Also, any adjudication on the merits would be premature. Therefore,  
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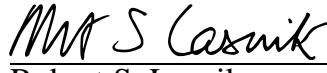
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23 <sup>2</sup> Defendant filed a letter and proposed stipulation noting that plaintiffs' reply suggested  
24 that plaintiffs were contending that Filosa only had rights to assert a claim based on the duty to  
25 indemnify, and the insureds only retained rights related to the duty to defend. The letter stated  
26 that if that were so, defendant would stipulate to a dismissal without prejudice. Plaintiffs  
27 refused to limit their claims as proposed. Despite plaintiffs' contentions to the contrary,  
28 defendant did not file the stipulation to show a purported agreement. Rather, the letter made  
clear that it was a proposal to agree.

1 the Court will not dismiss the insureds' claims.

2 Accordingly, the insureds' motion for voluntary dismissal (Dkt. #30) is DENIED.

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4 DATED this 7th day of January, 2009.

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8 Robert S. Lasnik  
9 United States District Judge  
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